

Summary of the Army Corps of Engineers Reform and Community Relations Improvement Act of 2001

By
Representative Tom Tancredo

Sec. 1 Short Title

- “The Army Corps of Engineers Reform and Community Relations Improvement Act of 2001.”

Sec. 2 Findings and Purposes

Sec. 3 Community Relations Improvement Plan

- Requires the Corps to report to Congress on all federally owned lands under the jurisdiction of the Corps, which of those lands are no longer needed and in the federal interest,
- Requires the Corps to recommend a plan regarding cost-sharing for rehabilitation, modification, operation, and maintenance of recreation facilities at Corps projects leased by states and localities for recreational use. This cost-sharing proposal was endorsed by the Western Governor's Association in 1999, including then-Governor George W. Bush.

Sec. 4 Public Hearings

- This section is also part of the “Community Relations Improvement Plan, but is separated for legislative purposes. The purpose of this section would be to improve communication and understanding between the Corps and the community. Before the Secretary or any other public or private entity commences any work at a water resources project under the jurisdiction of the Corps, the Corps is required to hold a public hearing in the vicinity of the project and receive public comments on the proposed work and project. Rep. Tancredo has repeatedly requested such hearings for projects that affect communities neighboring the Cherry Creek Dam.

Sec. 5 Independent Review

- Rep. Tancredo suggests that a new Director of Independent Review should be placed in the Army Inspector General's office, rather than within the Army Corps of Engineers Civil Works Division. With that exception, the Independent Review section is very similar to Rep. Kind's format, which Rep. Tancredo strongly supports.
- Projects whose costs exceed \$25 million and projects objected to by other federal or state agencies are required to undergo outside, independent peer review. Independent review would only apply to one out of every six Army Corps projects on the basis of this criterion.
- Peer review will be undertaken by panels of 5 to 9 reviewers, compensated at a rate determined by the Army Inspector General, and appointed by a Director of Independent Review who comes from outside the federal government and serves a non-renewable term of three years. Today, economic or engineering models will often undergo some kind of independent technical

review in the Corps. But Corps personnel undertake much of that review, and review focuses on specific pieces of analysis, not on the way overall studies are put together or on the ultimate conclusions reached.

The bill integrates this review into the existing planning process to minimize and delay in Corps planning (unless, of course, the review finds fundamental flaws or dishonesty, in which case delays are inevitable but desirable). Typically, the Corps will release a draft feasibility report and environmental impact statement with a recommended plan for public comment. Then, following a sixty to ninety day public comment period, the Corps will typically take more than a year to evaluate the comments, undertake additional technical analysis, and put out a final document. That final document also receives a 30 day public comment, followed by another, quicker review and a final record of decision. This peer review will overlap with the original comment period and extend a few months into the period the Corps will typically undertake to review comments. There will also be a brief follow up during the period of the final public comment.

- This Independent Review reform was a recommendation of the National Academy of Sciences for the \$1.2 billion Upper Mississippi River navigation study. The Bush Administration is also reviewing implementing an independent review policy.

Sec. 6 Public Access to Information and Data / Identification of Project Backlog

- The section requires the Corps to disclose exactly what projects are included in the so-called \$54 billion construction backlog. It also requires a reassessment of the cost/benefits of all projects within the backlog.
- Similar to the Kind bill, it allows public access to all information and project data that influenced the Army Corps decision to recommend a particular project, including all information shared with a project sponsor. An exception is made for proprietary information. And the information is to be available on the Internet, which many Corps Districts already do.

Sec. 7 Modern Project Criteria

- **NEGATIVE BENEFITS-** This subsection seeks to address the concerns of stakeholders whose water related activities are negatively impacted by Army Corps projects. For example, duck hunters in Eastern Arkansas are very concerned about a proposed \$311 million irrigation project that will dramatically alter habitat for mallard ducks. This project is likely to have a major negative impacts upon the \$635 million a year duck hunting industry in Arkansas, however, the Corps has not taken these "negative benefits into account. This reform was also a recommendation of the National Academy of Sciences recent report criticizing the Corps' study of Upper Mississippi River navigation.

- **EFFICIENT MANAGEMENT AND OPERATING PRACTICES-** This subsection seeks to ensure that the Army Corps first considers the potential for implementing better management and operating practices before building large structural projects in addressing water resources management problems. This provision is also based upon a recommendation of the National Academy of Sciences report.
- **LIMITATION UPON COMPETITION WITH THE PRIVATE SECTOR-** this subsection seeks to address key concerns that construction contractors have with the Army Corps competing for the same work, such as renovating public schools in the District of Columbia or cleaning up Superfund sites. Rarely, if ever, is the federal government (especially the Army Corps) able to build projects as cost-effectively as the private sector, in cases where projects can feasibly be built by the private sector. Also, it is bad policy to allow the federal government to crowd out private sector competition.
- **RECOMMENDATION OF PROJECTS-** This subsection originates from Rep. Mark Sanford's legislation last year. It would raise the required benefit-to-cost ratio to from 1-to-1 to 1.5-to-1. The 1-to-1 ratio dates back to the New Deal-era of the 1930s. In the 21st century, taxpayers deserve and should expect their government to make sound investments that generate significantly greater benefits than costs. Otherwise, those funds are better left in the hands of taxpayers and the private sector, especially considering the tax-drag that inherently makes government investment less efficient and economical than private investment.
- **REVISION OF THE PRINCIPLES AND GUIDELINES-** This subsection requires the Secretary of the Army to revise the Corps' principles and guidelines to give preference to project alternatives that maximize the rate of return for national economic development benefits. The Corps must also document the incremental components of project alternatives and their effect on the overall benefits and costs of a project.

Sec. 8 Regional Impacts of Port and Harbor Projects

- Directs the Corps of Engineers, in consultation with the National Academy of Sciences, to revise its Principles and Guidelines to ensure that the impacts of deepening one port upon another U.S. port are evaluated and considered in project studies. This is currently a major problem that has contributed to a nationwide "Race to the Bottom," where foreign-owned shipping lines are pushing for deeper ports in playing one U.S. port against another for leases at terminals.

Sec. 9 Reduction of the Construction Backlog

- While other sections of the bill identify and reevaluate the actual cost of the Corps' backlog, this section seeks to reduce the Corps' growing construction backlog. This section will reduce the backlog by speeding up the automatic deauthorization process (which already exists) for unfunded but approved projects from seven (7) consecutive years of no obligated funding for construction to four (4) consecutive years of no obligations. This provision also sets up a process to automatically deauthorize \$8 billion worth of "inactive" projects – projects the Corps has determined are no longer economically justified and no longer enjoy support at the local level.

Sec. 10 Cost-Sharing

- This section expands upon the major cost-sharing reforms championed by President Reagan in the 1980s and addresses a key shortfall of those reforms, the lack of cost-sharing for operations and maintenance of the Inland Waterways system. The cost-sharing provision, suggested here for beach replacement projects, mirrors a policy President Bush is applying in the FY 2002 budget to periodic beach nourishment projects.